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HOUSE BILL 992

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BOBBIE K. MALLORY

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING SECTIONS 30-31-22
AND 30-31-23 NMSA 1978 (BEING LAWS 1972, CHAPTER 84, SECTIONS 22
AND 23, AS AMENDED) TO INCREASE PENALTIES FOR CERTAIN OFFENSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-31-22 NMSA 1978 (being Laws 1972,
Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--
DISTRIBUTION PROHIBITED. --

A. Except as authorized by the Controlled Substances
Act, it is unlawful for any person to intentionally distribute
or possess with intent to distribute a controlled substance or a
controlled substance analog except a substance enumerated in
Schedule I or II that is a narcotic drug or a controlled
substance analog of a controlled substance enumerated in

Underscored material = new
[bracketed material] = delete

1 Schedule I or II that is a narcotic drug. Any person who
2 violates this subsection with respect to:

3 (1) marijuana is:

4 (a) except as provided in Subparagraph (c) of
5 this paragraph, for the first offense, guilty of a fourth degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978;

8 (b) for the second and subsequent offenses,
9 guilty of a third degree felony and shall be sentenced pursuant
10 to the provisions of Section 31-18-15 NMSA 1978;

11 (c) for the first offense, if more than one
12 hundred pounds is possessed with intent to distribute or
13 distributed or both, guilty of a third degree felony and shall
14 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
15 1978; and

16 (d) for the second and subsequent offenses,
17 if more than one hundred pounds is possessed with intent to
18 distribute or distributed or both, guilty of a second degree
19 felony and shall be sentenced pursuant to the provisions of
20 Section 31-18-15 NMSA 1978;

21 (2) any other controlled substance enumerated in
22 Schedule I, II, III or IV or a controlled substance analog of a
23 controlled substance enumerated in Schedule I, II, III or IV
24 except a substance enumerated in Schedule I or II that is a
25 narcotic drug or a controlled substance analog of a controlled

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[bracketed material] = delete

1 substance enumerated in Schedule I or II that is a narcotic
2 drug, is:

3 (a) for the first offense, guilty of a third
4 degree felony and shall be sentenced pursuant to the provisions
5 of Section 31-18-15 NMSA 1978; provided, however, for
6 amphetamine or methamphetamine, their salts, isomers or salts of
7 isomers as enumerated in Schedule II or a controlled substance
8 analog of amphetamine or methamphetamine, their salts or salts
9 of isomers, for the first offense, guilty of a second degree
10 felony and shall be sentenced pursuant to the provisions of
11 Section 31-18-15 NMSA 1978; and

12 (b) for the second and subsequent offenses,
13 guilty of a second degree felony and shall be sentenced pursuant
14 to the provisions of Section 31-18-15 NMSA 1978; and

15 (3) a controlled substance enumerated in Schedule
16 V or a controlled substance analog of a controlled substance
17 enumerated in Schedule V is guilty of a misdemeanor and shall be
18 punished by a fine of not less than one hundred dollars (\$100)
19 or more than five hundred dollars (\$500) or by imprisonment for
20 a definite term not less than one hundred eighty days but less
21 than one year, or both.

22 B. Except as authorized by the Controlled Substances
23 Act, it is unlawful for any person to intentionally create or
24 deliver, or possess with intent to deliver, a counterfeit
25 substance. Any person who violates this subsection with respect

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1 to:

2 (1) a counterfeit substance enumerated in
3 Schedule I, II, III or IV is guilty of a fourth degree felony
4 and shall be sentenced pursuant to the provisions of Section
5 31-18-15 NMSA 1978; and

6 (2) a counterfeit substance enumerated in
7 Schedule V is guilty of a petty misdemeanor and shall be
8 punished by a fine of not more than one hundred dollars (\$100)
9 or by imprisonment for a definite term not to exceed six months,
10 or both.

11 C. Any person who knowingly violates Subsection A or B
12 of this section while within a drug-free school zone, excluding
13 private property residentially zoned or used primarily as a
14 residence, with respect to:

15 (1) marijuana is:

16 (a) except as provided in Subparagraph (c) of
17 this paragraph. for the first offense, guilty of a third degree
18 felony and shall be sentenced pursuant to the provisions of
19 Section 31-18-15 NMSA 1978;

20 (b) for the second and subsequent offenses,
21 guilty of a second degree felony and shall be sentenced pursuant
22 to the provisions of Section 31-18-15 NMSA 1978;

23 (c) for the first offense, if more than one
24 hundred pounds is possessed with intent to distribute or
25 distributed or both, guilty of a second degree felony and shall

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[bracketed material] = delete

1 be sentenced pursuant to the provisions of Section 31-18-15 NMSA
2 1978; and

3 (d) for the second and subsequent offenses,
4 if more than one hundred pounds is possessed with intent to
5 distribute or distributed or both, guilty of a first degree
6 felony and shall be sentenced pursuant to the provisions of
7 Section 31-18-15 NMSA 1978;

8 (2) any other controlled substance enumerated in
9 Schedule I, II, III or IV or a controlled substance analog of a
10 controlled substance enumerated in Schedule I, II, III or IV
11 except a substance enumerated in Schedule I or II that is a
12 narcotic drug or a controlled substance analog of a controlled
13 substance [~~enumerated~~] enumerated in Schedule I or II that is a
14 narcotic drug, is:

15 (a) for the first offense, guilty of a second
16 degree felony and shall be sentenced pursuant to the provisions
17 of Section 31-18-15 NMSA 1978; and

18 (b) for the second and subsequent offenses,
19 guilty of a first degree felony and shall be sentenced pursuant
20 to the provisions of Section 31-18-15 NMSA 1978;

21 (3) a controlled substance enumerated in Schedule
22 V or a controlled substance analog of a controlled substance
23 enumerated in Schedule V is guilty of a fourth degree felony and
24 shall be sentenced pursuant to the provisions of Section
25 31-18-15 NMSA 1978; and

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1 (4) the intentional creation, delivery or
2 possession with the intent to deliver:

3 (a) a counterfeit substance enumerated in
4 Schedule I, II, III or IV is guilty of a third degree felony and
5 shall be sentenced pursuant to the provisions of Section
6 31-18-15 NMSA 1978; and

7 (b) a counterfeit substance enumerated in
8 Schedule V is guilty of a misdemeanor and shall be punished by a
9 fine of not less than one hundred dollars (\$100) nor more than
10 five hundred dollars (\$500) or by imprisonment for a definite
11 term not less than one hundred eighty days but less than one
12 year, or both.

13 D. Notwithstanding the provisions of Subsection A of
14 this section, distribution of a small amount of marijuana for no
15 remuneration shall be treated as provided in Paragraph (3) of
16 Subsection B of Section 30-31-23 NMSA 1978. "

17 Section 2. Section 30-31-23 NMSA 1978 (being Laws 1972,
18 Chapter 84, Section 23, as amended by Laws 1990, Chapter 19,
19 Section 5 and also by Laws 1990, Chapter 33, Section 1) is
20 amended to read:

21 "30-31-23. CONTROLLED SUBSTANCES-- POSSESSION PROHIBITED. --

22 A. It is unlawful for any person intentionally to
23 possess a controlled substance unless the substance was obtained
24 pursuant to a valid prescription or order of a practitioner
25 while acting in the course of his professional practice or

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1 except as otherwise authorized by the Controlled Substances Act.
2 It is unlawful for any person intentionally to possess a
3 controlled substance analog.

4 B. Any person who violates this section with respect
5 to:

6 (1) one ounce or less of marijuana is, for the
7 first offense, guilty of a petty misdemeanor and shall be
8 punished by a fine of not less than fifty dollars (\$50.00) or
9 more than one hundred dollars (\$100) and by imprisonment for not
10 more than fifteen days, and, for the second and subsequent
11 offenses, guilty of a misdemeanor and shall be punished by a
12 fine of not less than one hundred dollars (\$100) or more than
13 one thousand dollars (\$1,000) or by imprisonment for a definite
14 term less than one year, or both;

15 (2) more than one ounce and less than eight
16 ounces of marijuana is guilty of a misdemeanor and shall be
17 punished by a fine of not less than one hundred dollars (\$100)
18 or more than one thousand dollars (\$1,000) or by imprisonment
19 for a definite term less than one year, or both; or

20 (3) eight ounces or more of marijuana is guilty
21 of a fourth degree felony and shall be sentenced pursuant to the
22 provisions of Section 31-18-15 NMSA 1978.

23 C. Except for those substances listed in Subsection D
24 of this section, any person who violates this section with
25 respect to any amount of any controlled substance enumerated in

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[bracketed material] = delete

1 Schedule I, II, III or IV or a controlled substance analog of a
2 substance enumerated in Schedule I, II, III or IV is guilty of a
3 misdemeanor and shall be punished by a fine of not less than
4 five hundred dollars (\$500) or more than one thousand dollars
5 (\$1,000) or by imprisonment for a definite term less than one
6 year, or both.

7 D. Any person who violates this section with respect
8 to phencyclidine as enumerated in Schedule III or a controlled
9 substance analog of phencyclidine [~~methamphetamine, its salts,
10 isomers or salts of isomers as enumerated in Schedule II or a
11 controlled substance analog of methamphetamine, its salts,
12 isomers or salts of isomers;~~] or a narcotic drug enumerated in
13 Schedule I or II or a controlled substance analog of a narcotic
14 drug enumerated in Schedule I or II is guilty of a fourth degree
15 felony and shall be sentenced pursuant to the provisions of
16 Section 31-18-15 NMSA 1978.

17 E. Any person who violates this section with respect
18 to amphetamine or methamphetamine, their salts, isomers or salts
19 of isomers as enumerated in Schedule II or a controlled
20 substance analog of amphetamine or methamphetamine, their salts,
21 isomers or salts of isomers, is guilty of a third degree felony
22 and shall be sentenced pursuant to the provisions of Section 31-
23 18-15 NMSA 1978."

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 15, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 992

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 3, line 9, strike "second" and insert in lieu
thereof "third".

2. On page 8, line 21, strike "third" and insert in lieu
thereof "fourth".

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 1 Against

Yes: 7

No: M P. Garcia

Excused: King, Luna, Rios, Sanchez, Vaughn

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 992, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____ Not Adopted _____

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 3 Against

Yes: 5

No: Lopez, Sanchez, McSorley

Excused: None

Absent: None

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Underscored material = new
[bracketed material] = delete